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In re Application of
Eliezer Masliah et al
Application No. 09/933,640
Filed: August 20, 2001
Attorney Docket No. 6627-PA1071

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: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
:
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This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed August 13, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 365(c) for the benefit of the prior-filed PCT application set forth in the concurrently filed Application Data Sheet.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(I) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1).

Petitioner claims benefit under 35 U.S.C. § 120 for the prior-filed PCT Application No. PCT/US01/05569, filed February 20, 2001. However the PCT application data is listed under **foreign** priority information on the application data sheet filed with the instant petition.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute application data sheet or an amendment to correct the above matter is required.

Further correspondence with respect to this matter should be addressed as follows:


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Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.


Karen Creasy
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for Patent Examination Policy